

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MARTHA MCINTYRE,

Plaintiff,

v.

TARGET CORPORATION,

Defendant.

MARGO K. BRODIE, United States District Judge:

Plaintiff Martha McIntyre commenced the above-captioned action on June 29, 2019 against Defendant Target Corporation in the Supreme Court of the State of New York, Queens County and removed the action to federal court on August 23, 2019. (Notice of Removal, Docket Entry No. 1.) Plaintiff alleges that she slipped and fell in Defendant's store and asserts a negligence claim. (*Id.*) By report and recommendation dated May 6, 2020, Magistrate Judge Steven Tiscione *sua sponte* recommended that the Court dismiss the action pursuant to Rule 41(b) of the Federal Rules of Civil Procedure due to Plaintiff's "repeated failure to adhere to the Court's rules and the apparent lack of prosecution" of the case (the "R&R").¹ (R&R, Docket Entry No. 18.) No party has objected to the R&R.

A district court reviewing a magistrate judge's recommended ruling "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge."

¹ Plaintiff's counsel, Daniel Shimko, moved to withdraw from this case on April 6, 2020 due to his inability to contact and adequately represent Plaintiff. (*See* Mot. to Withdraw, Docket Entry No. 15; Declaration of Daniel Shimko, Docket Entry No. 15-1.) Judge Tiscione reserved ruling on the motion to withdraw until Plaintiff's counsel served Plaintiff with a copy of the R&R. (*See* Order re Mot. to Withdraw, Docket Entry No. 18.)

28 U.S.C. § 636(b)(1)(C). “Where parties receive clear notice of the consequences, failure to timely object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.” *Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (quoting *Mario v. P&C Food Markets, Inc.*, 313 F. 3d 758, 766 (2d Cir. 2002) (citing *Small v. Sec’y of Health & Human Servs.*, 892 F. 2d 15, 16 (2d Cir. 1989) (per curiam))); *see also Sepe v. N.Y. State Ins. Fund*, 466 F. App’x 49, 50 (2d Cir. 2012) (quoting *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997)); *see also Almonte v. Suffolk Cty.*, 531 F. App’x 107, 109 (2d Cir. 2013) (“As a rule, a party’s failure to object to any purported error or omission in a magistrate judge’s report waives further judicial review of the point.” (quoting *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003))); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010) (“[A] party waives appellate review of a decision in a magistrate judge’s [r]eport and [r]ecommendation if the party fails to file timely objections designating the particular issue.” (citations omitted)).

The Court has reviewed the unopposed R&R and, finding no clear error, adopts the R&R pursuant to 28 U.S.C. § 636(b)(1), and dismisses the action pursuant to Rule 41(b) without prejudice. The Clerk of Court is directed to close this case and mail a copy of this Order to Plaintiff at her address of record.

Dated: June 15, 2020
Brooklyn, New York

SO ORDERED:

s/ MKB

MARGO K. BRODIE
United States District Judge